

Amend BRIEF DESCRIPTION OF THE DRAWINGS by adding the following:

FIG. 7 is a perspective view of the improved multi-layered drumhead of the present invention.

FIG 8 is a perspective view of an alternative embodiment of the improved drumhead of the present invention.

FIG 9 is a perspective view of another alternative embodiment of the improved drumhead of the present invention.

FIG 10 is a perspective view of another alternative embodiment of the improved drumhead of the present invention.

Remarks

Applicant acknowledges the rejection of Claims 1 through 19 on a variety of grounds, as follows: Claims 1 through 19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 through 22 of U.S. Patent No. 6,580,023; Claims 1 through 5, 13, 14 and 16 under 35 U.S.C. §102(b) as being anticipated by Koishikawa (U.S. Patent No. 3,405,586); Claims 6, 7, 9, 11 and 12 under 35 U.S.C. §103(a) as being unpatentable over Koishikawa in view of Woodson (U.S. Patent No. 4,077,297); Claim 15 under 35 U.S.C. §103(a) as being unpatentable over Koishikawa in view of McGill (U.S. Patent No. 6,365,812); Claim 8 under 35 U.S.C. §103(a) as being unpatentable over Koishikawa in view of Miller (U.S. Patent No. 5,610,350); Claim 10 under 35 U.S.C.

§103(a) as being unpatentable under Koishikawa in view of Miller as applied to Claims 1 and 8, and further in view of Fukushima, et al., (U.S. Patent No. 4,775,574); Claims 17 and 18 under 35 U.S.C. §103(a) as being unpatentable over Koishikawa in view of Schwagerl (U.S. Patent No. 6,063,992); and, Claim 19 under 35 U.S.C. §103(a) as being unpatentable over Koishikawa in view of Magruder (U.S. Design Patent No. D320,035).

Claims 2 through 15 and 17 through 19 are objected to because the preamble of Claims 2 through 15 and 17 through 19 are not consistent with independent Claims 1 and 16.

The drawings are objected to under 37 C.F.R. 1.83(a) for failure to show every feature of the invention specified in the claims.

Applicant respectfully disagrees with the double patenting rejection and contends that independent Claims 1 and 16 of this application are clearly patentably distinct from the inventions recited in Claims 1 and 18 of U.S. Patent No. 6,580,023 (the "'023 Patent"). The most pertinent language portion of the corresponding claims (i.e., Claim 1 (of the '023 Patent) versus Claim 1 (of the application); and Claim 18 (of the '023 Patent) versus Claim 16 (of the application)) for comparison purposes are as follows:

Claim 1 ('023 Patent)

"A material for constituting a drumming surface extending horizontally and flat

across the area defined within said circumferential inner rim and continuing flat more than half the distance across the area defined between said circumferential inner rim and said circumferential outer rim, said material being generally co-planar with said horizontal angular hoop;”

Claim 1 (Application 10/627,301)

“A material for constituting a drumming surface extending flat across the area defined within said inner rim, *said material for constituting a drumming surface having a rim portion integrally formed therewith, including a generally vertically continuous wall flowing from said drumming surface, and a shoulder member formed below said rim portion and in conjunction with said wall, which includes a base portion*, wherein said wall at its base portion extends flat across the area defined between said inner rim and said outer rim to maximize the surface to surface contact between said material constituting a drumming surface and said planar upper member and said planar lower member and ensure that said material constituting a drumming surface is fixably secured;”

Claim 18 ('023 Patent)

“A material for constituting a drumming surface extending horizontally and flat across the area defined within said inner rim and continuing flat across the area defined between said inner rim and said outer rim to maximize the surface to surface

contact between said material constituting a drumming surface and said generally flat, planar upper and lower members and ensure that said material constituting a drumming surface is fixably secured, said material constituting a drumming surface being generally co-planar with said horizontal frame member;"

Claim 16 (Application 10/627,301)

"A material for constituting a drumming surface, *said material for constituting a drumming surface having a rim portion, including a generally vertically continuous wall, and a shoulder member formed below said rim portion and in conjunction with said wall, wherein said shoulder member extends flat across the area defined between said inner rim and said outer rim;*"

According to the examiner, these claims (i.e., Application Claims 1 and 16 versus patent Claims 1 and 18) are not patentably distinct because they claim the identical inventions except for the use of some "different wording and adjectives describing the identical limitations in the claims." Respectfully, this is incorrect. These inventions are, indeed, patentably distinct because the subject claims of the '023 Patent are missing an extremely important limitation, to wit: that the drumming surface includes a rim portion integrally formed with that surface, that the rim portion includes a generally vertically continuous wall flowing from the drumming surface to a shoulder member formed below which includes a base portion. It should be clear

that this language alone, which is not recited anywhere in the patent claims, defines a structure that differs significantly from the patented inventions.

These claim limitations are not merely “different wording and adjectives” that otherwise describe “the identical limitations in the claims.” In fact, they describe an entirely different structure and structural relationship that includes a drumming surface which, in contrast to the language in the patented claims, does not constitute a material that is generally co-planar with the horizontal annular hoop. The drumming surface recited in the claims of this application is positioned on an entirely different plane than the planar upper and lower members of the frame member. Again, two distinctly different structures (and structural relationships) are claimed. Accordingly, applicant respectfully requests that the double patenting rejection of Claims 1 through 19 be withdrawn.

Anticipation under 35 U.S.C. §102(b) requires that the prior art reference cited show each and every element claimed. Without this showing, anticipation does not exist. *General Elec. Co. v. U.S. Ct. Cl.*, (1978) 572 F.2d 745, 215 Ct. Cl. 636, 198 U.S.P.Q. 65. Claims 1 through 5, 13, 14 and 16 have been rejected under 35 U.S.C. §102(b) as being anticipated by Koishikawa. The Koishikawa invention is significantly different in so many respects from the invention of the rejected claims that anticipation, as a ground for rejection, is clearly inappropriate. The term “planar” is defined in the dictionary as “[o]f or lying in one plane.” Webster’s New World

College Dictionary, 4th Ed. In Koishikawa, the annular frame 12 comprises two sections, an upper (horizontal) part 12a and a lower (horizontal) part 12b, and perpendicularly bent end pieces of the internal free end of horizontal member 12a (referenced 12c) and horizontal member 12b. Once these integrally formed units are bent at a 90° angle with a vertical orientation, they are no longer planar and, thus, constitute a entirely different structure than the structure recited in Claims 1 through 5 of the application. Under no circumstances can section 12c or its opposing counterpart (not numerically referenced) be considered to be on the same plane as parts 12a and 12b of annular frame 12. They are all integral components of the same structure, but lying on completely different planes.

Accordingly, since Koishikawa does not “show each and every element claimed in the cited reference”, the rejection of Claims 1 through 5, 13, 14 and 16 under 35 U.S.C. §102(b) cannot stand and, thus, should be withdrawn.

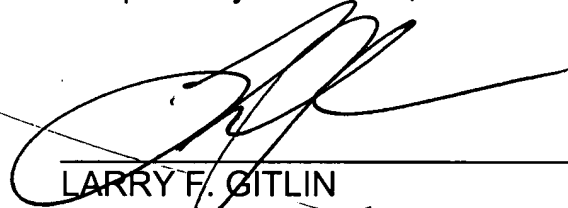
As Claims 6 through 12, 15 and 17 through 19 are dependent on claims that should now be allowable, similarly, these claims should be allowed and the 35 U.S.C. §103(a) rejection should be withdrawn.

Regarding the objection to the drawings under 37 C.F.R. 1.83(a), additional sheets of drawings are submitted to address the grounds for objection to Claims 15, 17, 18 and 19.

The objections to the preambles of Claims 2 through 15 and 17 through 19 and the objection to the drawings have also been addressed and resolved.

Accordingly, all claims in the application, namely Claims 1 and 16 and all claims depending therefrom, as amended, are now in condition for allowance, which action is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'LARRY F. GITLIN', is written over a horizontal line.

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